



April 9, 2001

ENGROSSED SENATE BILL No. 404

DIGEST OF SB 404 (Updated April 3, 2001 2:40 PM - DI 102)

Citations Affected: IC 16-18; IC 16-22; IC 16-42.

Synopsis: Certified food handlers. Requires that, after December 31, 2004, every food establishment must have at least one certified food handler. Exempts certain food handling activities and certain institutions from the requirement to have a certified food handler. Requires a certified food handler to hold a certificate recognized by the Conference for Food Protection or an equivalent nationally recognized certification program as determined by the state department of health. Preempts local health departments from: (1) regulating food handlers; (2) imposing any sanitary standards on or locally prescribing penalties for the violation of any state law or rule concerning food handling or food establishments; and (3) establishing any requirements or standards for the installation of food handling machinery in a food establishment. Requires the state department of health to establish penalties for violations of the chapter.

Effective: Upon passage.

Miller, Rogers

(HOUSE SPONSORS — BROWN C, BECKER, WELCH)

January 18, 2001, read first time and referred to Committee on Health and Provider Services.

February 15, 2001, amended, reported favorably — Do Pass.

February 19, 2001, read second time, ordered engrossed. Engrossed.

February 26, 2001, returned to second reading for purposes of amendment.

February 27, 2001, reread second time, amended, ordered engrossed.

February 28, 2001, re-engrossed.

March 5, 2001, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 12, 2001, read first time and referred to Committee on Public Health.

April 9, 2001, amended, reported — Do Pass.

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ES 404—LS 8074/DI 102+



April 9, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED SENATE BILL No. 404

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-51.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 51.5. "Certified food**
4 **handler", for purposes of IC 16-42-5.2, has the meaning set forth**
5 **in IC 16-42-5.2-4.**

6 SECTION 2. IC 16-18-2-80 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 80. "Corporation",
8 for purposes of IC 16-22-8, ~~has the meaning set forth in IC 16-22-8-2.~~
9 **IC 16-42-5, and IC 16-42-5.2, means the health and hospital**
10 **corporation created under IC 16-22-8.**

11 SECTION 3. IC 16-18-2-135 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 135. (a) "Food", for
13 purposes of IC 16-42-1 through IC 16-42-4 and IC 16-42-18, means the
14 following:

- 15 (1) Articles used for food, drink, confectionery, or condiment for
16 humans.
17 (2) Chewing gum.

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(3) Articles used for components of any of these articles.

(b) "Food", for purposes of IC 16-42-5 ~~has the meaning set forth in IC 16-42-5-1.~~ and IC 16-42-5.2, means the following:

(1) All articles used for food, drink, confectionery, or condiment whether simple, mixed, or compound.

(2) All substances or ingredients used in the preparation of the items described in subdivision (1).

SECTION 4. IC 16-18-2-137 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 137. "Food establishment", for purposes of IC 16-42-5 ~~has the meaning set forth in IC 16-42-5-2.~~ and IC 16-42-5.2, means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food.

SECTION 5. IC 16-18-2-138 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 138. "Food handling", for purposes of IC 16-42-5 ~~has the meaning set forth in IC 16-42-5-3.~~ and IC 16-42-5.2, means producing, processing, handling, preparing, manufacturing, packing, storing, selling, distributing, or transporting of food.

SECTION 6. IC 16-18-2-138.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 138.2. "Food handling machinery", for purposes of IC 16-42-5, has the meaning set forth in IC 16-42-5-2.3.

SECTION 7. IC 16-18-2-138.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 138.3. "Food handler", for purposes of IC 16-42-5.2, has the meaning set forth in IC 16-42-5.2-5.

SECTION 8. IC 16-42-5-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.5. Except as provided in this chapter, a corporation or local health department may not impose any:

(1) sanitary standards on; or

(2) locally prescribed penalties for the violation of any state law or rule concerning;

food handling or food establishments.

SECTION 9. IC 16-42-5-0.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.7. (a) Except as provided in this chapter, a corporation or local health department may not impose any requirements or standards on the installation of food handling

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machinery in a food establishment regulated by this chapter.

(b) The installation of food handling machinery includes all activities associated with the machinery's installation, including the wiring, plumbing, air handling, and all other processes.

(c) This section does not limit the authority of the state fire marshal, the state building commissioner, or other state agencies to regulate food establishments.

(d) This section does not limit the authority of a corporation or local health department to enforce requirements or standards established by state law or the state department for the installation of food handling machinery.

SECTION 10. IC 16-42-5-2.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.3. As used in this chapter, "food handling machinery" means any of the following used for and in food handling:**

(1) Equipment.

(2) Appliances.

(3) Tools.

(4) Plumbing and related fixtures.

(5) Refrigeration devices.

(6) Heating, ventilation, and cooling equipment.

(7) Any other piece of equipment used for and in food handling.

SECTION 11. IC 16-42-5-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 24. (a)** For the purpose of enforcing IC 16-41-20, IC 16-41-21, IC 16-41-23, IC 16-41-24, IC 16-41-34, IC 16-42-5, or IC 16-42-7, the local health officers are food environmental health specialists subordinate to the state department.

(b) The state department shall provide to the local health officers who are food environmental health specialists guidelines concerning the interpretation of state laws and rules concerning food handling and food establishments so that enforcement of the state laws and rules is uniform throughout the state.

SECTION 12. IC 16-42-5.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 5.2. Food Handlers

Sec. 1. Except as provided in this chapter, a corporation or local health department may not impose any registration, certification, or licensing requirements on food handling or food handlers.



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1 **Sec. 2. This chapter does not apply to a food establishment when**
2 **the food establishment's food handling activities are limited solely**
3 **to one (1) or more of the following:**

4 (1) Heating or serving precooked hot dog or sausage products,
5 popcorn, nachos, pretzels, or frozen pizza.

6 (2) Preparing or serving a continental breakfast such as rolls,
7 coffee, juice, milk, and cold cereal.

8 (3) Preparing or serving nonalcoholic or alcoholic beverages
9 or ice.

10 (4) Grinding coffee beans.

11 (5) Packaging foods that are not potentially hazardous foods
12 in accordance with rules adopted by the executive board.

13 (6) Heating when it is the only preparation step for a bakery
14 product.

15 (7) Providing prepackaged food in its original package.

16 **Sec. 3. This chapter does not apply to the following:**

17 (1) Hospitals licensed under IC 16-21.

18 (2) Health facilities licensed under IC 16-28.

19 (3) Housing with services establishments that are required to
20 file disclosure statements under IC 12-15.

21 (4) Continuing care retirement communities required to file
22 disclosure statements under IC 23-2-4.

23 **Sec. 4. As used in this chapter, "certified food handler" means**
24 **a food handler who holds a certificate described in section 7 of this**
25 **chapter.**

26 **Sec. 5. As used in this chapter, "food handler" means an**
27 **individual who:**

28 (1) is an owner, an operator, a manager, or an employee of a
29 food establishment; and

30 (2) is responsible for or oversees the storage, preparation,
31 display, or serving of food to the public.

32 **Sec. 6. After December 31, 2004, at least one (1) food handler at**
33 **a food establishment must be a certified food handler.**

34 **Sec. 7. A food handler who holds a certificate recognized by the**
35 **Conference for Food Protection or an equivalent nationally**
36 **recognized certification program as determined by the state**
37 **department of health meets the food borne illness prevention**
38 **training requirements established by the state department of**
39 **health.**

40 **Sec. 8. After December 31, 2004, a food establishment must have**
41 **at least one (1) certified food handler responsible for all periods of**
42 **the food establishment's operation. However, a certified food**

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handler need not be present at the food establishment during all hours of operation.

Sec. 9. After December 31, 2004, a food establishment that begins operation or changes ownership shall comply with section 6 of this chapter not later than six (6) months after beginning operation or changing ownership.

Sec. 10. After December 31, 2004, if a food establishment does not have a certified food handler because a certified food handler terminates employment with the food establishment, the owner or operator of the food establishment shall comply with section 6 of this chapter not later than three (3) months after the termination date of the previous certified food handler.

Sec. 11. After December 31, 2004, if more than one (1) food establishment operated by the same individual is located on the same property or on contiguous properties, only one (1) certified food handler is required for the food establishments.

Sec. 12. After December 31, 2004, an individual who violates any of the provisions of this chapter is subject to the penalties prescribed by the executive board under section 13 of this chapter.

Sec. 13. Not later than December 31, 2003, the executive board shall adopt rules under IC 4-22-2 establishing standards for:

- (1) the administration of this chapter; and
- (2) the imposition of penalties for violations of this chapter.

Sec. 14. This chapter does not limit the authority of a corporation or local health department to license retail food establishments.

Sec. 15. A corporation or local health department may, upon application to and approval of the state department, enforce the provisions of this chapter.

SECTION 13. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 16-22-8-2; IC 16-42-5-1; IC 16-42-5-2; IC 16-42-5-3.

SECTION 14. An emergency is declared for this act.

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SENATE MOTION

Mr. President: I move that Senator Rogers be added as second author of Senate Bill 404.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 404, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 5, delete "IC 16-42-5.2-3." and insert **"IC 16-42-5.2-4."**

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 2. IC 16-18-2-80 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 80. "Corporation", for purposes of IC 16-22-8 ~~has the meaning set forth in IC 16-22-8-2:~~ and IC 16-42-5.2, means the health and hospital corporation created under IC 16-22-8."

Page 1, line 14, delete "and IC 16-42-5.2,".

Page 1, line 14, strike "has the".

Page 1, line 15, strike "meaning set forth in IC 16-42-5-1." and insert **"and IC 16-42-5.2, means the following:**

(1) All articles used for food, drink, confectionery, or condiment whether simple, mixed, or compound.

(2) All substances or ingredients used in the preparation of the items described in subdivision (1)."

Page 2, line 1, delete "and IC 16-42-5.2,".

Page 2, line 1, strike "has the".

Page 2, line 2, strike "meaning set forth in IC 16-42-5-2." and insert **"and IC 16-42-5.2, means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food."**

Page 2, line 5, delete "and IC 16-42-5.2,".

Page 2, line 5, strike "has the".

Page 2, line 6, strike "meaning set forth in IC 16-42-5-3." and insert **"and IC 16-42-5.2, means producing, processing, handling, preparing, manufacturing, packing, storing, selling, distributing, or transporting of food."**

Page 2, line 11, delete "IC 16-42-5.2-4." and insert **"IC 16-42-5.2-5."**

Page 2, between lines 38 and 39, begin a new paragraph and insert: **"Sec. 3. This chapter does not apply to the following:**

(1) Hospitals licensed under IC 16-21.

(2) Health facilities licensed under IC 16-28.

(3) Housing with services establishments that are required to file disclosure statements under IC 12-15.

(4) Continuing care retirement communities required to file



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disclosure statements under IC 23-2-4."

Page 2, line 39, delete "Sec. 3." and insert "**Sec. 4.**".

Page 2, line 40, delete "6" and insert "7".

Page 2, line 42, delete "Sec. 4." and insert "**Sec. 5.**".

Page 3, line 3, delete "facility" and insert "**establishment**".

Page 3, line 6, delete "Sec. 5." and insert "**Sec. 6.**".

Page 3, line 8, delete "Sec. 6." and insert "**Sec. 7.**".

Page 3, line 9, delete "Conference for Food Protection or the".

Page 3, line 12, delete "Sec. 7." and insert "**Sec. 8.**".

Page 3, line 17, delete "Sec. 8." and insert "**Sec. 9.**".

Page 3, line 19, delete "5" and insert "6".

Page 3, line 21, delete "Sec. 9." and insert "**Sec. 10.**".

Page 3, line 24, delete "5" and insert "6".

Page 3, line 27, delete "Sec. 10." and insert "**Sec. 11.**".

Page 3, line 31, delete "Sec. 11." and insert "**Sec. 12.**".

Page 3, line 33, delete "12" and insert "**13**".

Page 3, line 34, delete "Sec. 12." and insert "**Sec. 13.**".

Page 3, between lines 37 and 38, begin a new paragraph and insert:

"Sec. 14. This chapter does not limit the authority of a corporation or local health department to license retail food establishments.

SECTION 8. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 16-22-8-2; IC 16-42-5-1; IC 16-42-5-2; IC 16-42-5-3."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 404 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Engrossed Senate Bill 404, which is eligible for third reading, be returned to second reading for purposes of amendment.

MILLER

SENATE MOTION

Mr. President: I move that Senate Bill 404 be amended to read as follows:

Page 4, between lines 18 and 19, begin a new paragraph and insert:

"Sec. 15. A corporation or local health department may, upon application to and approval of the state department, enforce the provisions of this chapter."

(Reference is to SB 404 as printed February 16, 2001.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 404, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 8, after "IC 16-22-8" insert ",".

Page 1, line 8, after "IC 16-22-8-2." insert "**IC 16-42-5**,".

Page 2, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 6. IC 16-18-2-138.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 138.2. "Food handling machinery", for purposes of IC 16-42-5, has the meaning set forth in IC 16-42-5-2.3.**"

Page 2, between lines 24 and 25, begin a new paragraph and insert:

"SECTION 8. IC 16-42-5-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.5. Except as provided in this chapter, a corporation or local health department may not impose any:**

(1) sanitary standards on; or

(2) locally prescribed penalties for the violation of any state law or rule concerning;

food handling or food establishments.

SECTION 9. IC 16-42-5-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.7. (a) Except as provided in this chapter, a corporation or local health department may not impose any requirements or standards on the installation of food handling machinery in a food establishment regulated by this chapter.**

(b) The installation of food handling machinery includes all activities associated with the machinery's installation, including the wiring, plumbing, air handling, and all other processes.

(c) This section does not limit the authority of the state fire marshal, the state building commissioner, or other state agencies to regulate food establishments.

(d) This section does not limit the authority of a corporation or local health department to enforce requirements or standards established by state law or the state department for the installation of food handling machinery.

SECTION 10. IC 16-42-5-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.3. As used in this chapter,**

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"food handling machinery" means any of the following used for and in food handling:

- (1) Equipment.**
- (2) Appliances.**
- (3) Tools.**
- (4) Plumbing and related fixtures.**
- (5) Refrigeration devices.**
- (6) Heating, ventilation, and cooling equipment.**
- (7) Any other piece of equipment used for and in food handling.**

SECTION 11. IC 16-42-5-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 24. **(a)** For the purpose of enforcing IC 16-41-20, IC 16-41-21, IC 16-41-23, IC 16-41-24, IC 16-41-34, IC 16-42-5, or IC 16-42-7, the local health officers are food environmental health specialists subordinate to the state department.

(b) The state department shall provide to the local health officers who are food environmental health specialists guidelines concerning the interpretation of state laws and rules concerning food handling and food establishments so that enforcement of the state laws and rules is uniform throughout the state."

Page 3, delete lines 2 through 4.

Page 3, line 5, delete "(8)" and insert **"(6)"**.

Page 3, line 7, delete "(9)" and insert **"(7)"**.

Page 3, delete lines 8 through 9.

Page 3, line 28, after "the" insert **"Conference for Food Protection or an equivalent nationally recognized certification program as determined by the"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 404 as reprinted February 28, 2001.)

BROWN C, Chair

Committee Vote: yeas 12, nays 0.

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